Sir, I move that the Travancore Insurance Act (Amendment) Bill be passed.

MR. E. G. SALTER: I second the motion.

The question that the Travancore Insurance Act (Amendment) Bill be passed was put and carried.

The Bill was passed.

THE TRAVANCORE EVIDENCE BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I rise to present the Report of the Select Committee appointed to consider the Travancore Evidence Bill and beg to move that the Bill as revised by the Committee be taken into consideration.

DR. C. C. JOHN: I second the motion.

MR. M. R. NARAYANA PILLAI: Sir, most of us had no time to go through the Bill and study it. Therefore I request that further time may be given to us before the Bill is taken up for consideration.

PRESIDENT: The Evidence Act of British India is a fairly well-known Act. It is one of the reproaches to Travancore that it has had no Evidence Act. And, so far as I can understand, this Bill proceeds on the lines of the British Indian Act. When was it published, Legal Remembrancer?

MR. PUTHUPALLI S. KRISHNA PILLAI: The report of the Select Committee was published on 20th May.

MR. M. R. NARAYANA PILLAI: Sir, there are certain recent decisions of our High Court applying to certain sections of the Evidence Act. These decisions show some discrepancies in the application of the sections. Therefore we want to study the Bill more closely before it is put on the Statute book.

PRESIDENT: The honourable member ought to have done that by this time. Are you now making a motion for adjournment?

MR. M. R. NARAYANA PILLAI: Yes, Sir.

RAJYASEVAPRAVINA KHAN BAHADUR G. S. ABDUL KARIM SAHIB SUHRAWARDY: Sir, the motion is not seconded.

The question that the Bill be taken into consideration was put and carried.

The Bill was taken into consideration.

Clauses 1 to 24.

The question that clauses 1 to 24 do stand part of the Bill was put and carried.

Clauses 1 to 24 were added on to the Bill.

Clause 25.

MR. C. JEBAMONY NADAR (*Kalkulam* cum *Vilavancode*): Sir, I rise to move that the term "Police Officer" in line 2 may be deleted and the expression "an officer who is vested with the powers of the Police, by law" be subsituted.

My object in moving this amendment is to avoid conflict of judicial decisions in future and also to bring the law in consonance with the decisions of our High Court. So far as Police functions are concerned there are now various Acts which confer such powers. The Opium Act, the Excise Act, the Forest Act and other similar Acts invest the

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powers of the Police on the officers of these different departments. Now, many instances of conflict of judicial decisions in British India have occurred on account of the existence of the term "Police officer" in the section. One set of decisions is to the effect that the section applies only to the confessions made before an officer of the regular Police force. Other decisions say that the section applies to confessions made to other officers of other departments also, provided they exercise police powers, for instance, the Excise or Forest officers.

PRESIDENT: I have been at some pains to go into the matter. Apparently the confusion arises because at present there is no statute. But the expression "Police Officer" according to the Evidence Act has been construed in the British Indian Courts in a most generous sense including all those who are functioning as Police Officers. As a matter of fact the Excise officers under rules who are given the powers of the Police officers are *eo nomini* designated as Police officers. What is the difficulty there?

MR. C. JEBAMONY NADAR: Sir, there also the difficulty is still experienced. For example A. I, R. 1934 Culcutta 580 states as follows:—

PRESIDENT: The All India Reporter is a very useful publication.

MR. C. JEBAMONY NADAR: This case is also reported in the I. L. R. series. I will read from 1934 Calcutta,

> "Having regard to the importance of this matter to the public and the State and in view of the confusion set up by conflicting decisions it would seem desirable that the legislature should deal with the matter again and give a clear definition of what is intended that the section should cover."

Another portion of the report says:

> "I can only repeat that if the legistature in the year 1861 or in the year 1872 or at any subsequent time intended any such thing, in my opinion they would have said so in clear and unmistakable terms.....That there was nothing to prevent the framers of the Evidence Act from saying expressly that confession made to police officers as well as these persons who are for the time being and for certain limited...invested with the powers of a police officer are inadmissible in evidence had they so intended."

Now, Sir, that shows that the opinion in British India is for making the necessary changes so that there may not be any confusion in the matter dealt with by this section.

MR. N. RAMAKRISHNA PILLAI (*Vaikom* cum *Kottayam*): Is there conflict of opinion now in British India?

MR. C. Jebamony Nadar: I say, Sir, that there is still conflict of opinion.

PRESIDENT: I see the honourable member's point. But really what ought to be done there is to have a definition clause defining the word "Police Officer" as meaning to include all persons exercising the function of the Police under the statute thereunto enabling——something of the kind.

MR. C. JEBAMONY NADAR: Yes, Sir. That would be sufficient. Otherwise difficulty would arise here, because our Police Act defines "Police Officer" as meaning one who is a member of the regular force.

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PRESIDENT: I am indebted to the honourable member for his intelligence in pointing out this.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I shall prepare a draft of the defining clause.

PRESIDENT: Yes.

The question that Clause 25 do stand part of the Bill was put and carried.

Clause 25 was added on to the Bill.

Clause 26.

The question that Clause 26 do stand part of the Bill was put and carried.

Clause 26 was added on to the Bill.

Clause 27.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, the amendment to Clause 27 stands in the name of Mr. E. P. Varghese and the member is not here.

The question that Clause 27 do stand part of the Bill was put and carried.

Clause 27 was added on to the Bill.

Clauses 28 and 29.

The question that Clauses 28 and 29 do stand part of the Bill was put and carried.

Clauses 28 and 29 stand part of the Bill.

Clause 30.

MR. C. JEBAMONY NADAR: Sir, I move the amendments Nos. 3 to 6.

Delete the words "and some of other of such persons" occurring in lines 3 and 4.

Delete also "as against such other person as well" occurring in lines 5 and 6.

In illustration (*a*) last line delete the letter "B" and substitute "A. but not against B."

Why I move these amendments is that the High Court in Travancore has all along declined to follow this provision of the British Indian Act, evidently because it is a departure from the English law. The matter first arose in 8 T. L. R. and following that there have been a series of uniform decisions up to the present day.

MR. JOSEPH VITHAYATHIL: If these amendments are accepted, may I know the purpose that will be served thereby?

MR. C. JEBAMONY NADAR: That will make the confession of a co-accused inadmissible.

The Select Committee do not say why the local case law has not been adverted to. They do not say why we should change the existing law, especially because of its being in conformity with the English rule of law. In fact, the judicial opinion here has been so weighty and uniform that 4 T. L. T. page 434, said "Section 30 of the Evidence Act could not be adopted as law here." This was a decision in 1105. Difficulties are likely to arise if the evidence of a co-prisoner is accepted, because the safeguards for true evidence are absent in the case of

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an accused in the dock, who cannot be put into the witness box and to whom no oath could be administered. When a witness is sworn, he undertakes solemnly to speak the truth, else he might be liable to divine punishment. Then the evidence is tested by cross-examination. So, to accept the statement of a co-accused as legal and valid evidence would be opposed to all known systems of criminal jurisprudence.

A man who has nothing to lose may be purchased to figure as an accused and asked to make a damaging statement inculpating an innocent person who may have no chance of discrediting that false statement and the result may be the conviction of an innocent person. The evidence of an approver, though he is examined as a witness, and therefore on oath and subjected to cross-examination, has been held to be unworthy of credit unless corroborated in material particulars. The rule which prevailed in India prior to the passing of the Indian Evidence Act was that the confession of an accused person was only evidence against him and cannot be used against others. Text writers have condemned in strong terms the provisions of the Indian Evidence Act, Section 30.

I submit, Sir, that this amendment would better serve the administration of Criminal Justice and may therefore be accepted as it is also in accordance with the law in England and the case law in Travancore.

MR. JOSEPH VITHAYATHIL: Sir, I rise to oppose the amendments.

MR KAINIKKARA M. PADMANABHA PILLAI: The amendments have not been seconded.

MR. K. KUNJU PANICKER; I second the amendments.

MR. JOSEPH VITHAYATHIL: Sir, if the amendments proposed by the honourable member are accepted, no useful purpose will be served by retaining the clause. It will only be a repetition of clause 21 which says that the admission of an accused may be proved against him. The section only says that the court may take into consideration the confession of an accused against a co-accused jointly tried with him for the same offence. It does not say that it is evidence as defined in clause 3 as against the co-accused. The fact is that when one of the prisoners makes a confession it is very difficult, practically impossible, for the court to ignore it altogether when considering the guilt of the other prisoners jointly tried for the same offence. But no court will convict a person on the uncorroborated confession of a co-accused. The section only says that the court may take this matter also into consideration. In any case if the House is not in favour of the principle underlying the clause the proper course would be to delete the clause itself and not to amend it in the manner suggested by the honourable member who has moved these amendments.

MR. PUTHUPALLI S. KRISHNA PILLAI: It appears that Mr. Jebamony Nadar seems to be under a misapprehension when he stated that the course of decision is uniform and that there is no break in the uniformity. I would refer the honourable member to 25 T. L. J. p. 923. I concede, Sir, that it has been the practice not to follow the provision

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of Section 30 of the Evidence Act. It is stated there that the confession of one accused as against his co-accused may affect the other accused. But how can the confession affect the co-accused if it cannot be admissible against him? The learned judge was under a disadvantage in that case, because the Evidence Act is no law here. Although the principle that we have been following is the rule followed in England, that procedure has been supported in the first instance by the absence of the statute law. In the commentaries of the Indian Evidence Act by Amir Ali it is stated thus—

> "While such a confession deserves ordinarily very little reliance it is never possible for a judge to exclude it, and he need no longer pretend to do so, the provisions of this section being inserted for the purpose of relieving him from an attempt to perform an intellectual impossibility. When a confession is made before a magistrate or judge by one accused implicating the co-accused, the magistrate or judge reading that confession cannot divorce himself from the fact that there is a statement on record and it is bound to have some effect on his judicial mind."

If the statute were to contain a provision that such a statement shall not be admissible against the other co-accused, you will be compelling him to be dishonest, as it were, so far as judicial consideration is concerned. But there is always the safety underlying the rule that no person shall be convicted on uncorroborated confession. That rule is applicable even to this confession.

MR. C. JEBAMONY NADAR : May I know whether there is difference between an approver's statement and a confession of an accused ?

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes. All that is stated here is that the confession of a co-accused may be taken into consideration. That is on the merits.

When the Bill was under consideration here this matter was pointed out. Even when the Bill was under discussion in the Select Committee, the matter was considered in the light of the judicial decisions thereon.

Further, as pointed out by Mr. Joseph Vithayathil, what will be the result if the proposed amendments are accepted? It would be a reduplication of Section 21 and it would be meaningless. Section 21 provides that any confession made by an accused person may be proved against him. Here the amendment is to omit certain words. The section itself has been necessitated because the law wanted to provide for admissibility of a confession made by an accused against his co-accused tried jointly with him. If the words referring to joint trial etc., are omitted, it will be as if we had two sections relating to the same matter. The amendments therefore cannot be accepted.

PRESIDENT : Order, order. The point to be borne in mind in regard to clause 30 is as follows. If a co-accused gives cogent information with detailed particulars regarding the commission of an offence by another accused, all that is provided is that the judge may take such a statement into account. In the absence of such a provision what happens is that the judge who has been and is bound to be

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impressed by the statement performs intellectual gymnastics and indulges in forced reasoning for the purpose of making it appear that he has not been influenced by such a statement and that he has not been guided by it. This is a kind of judicial dishonesty which this Government do not desire to encourage.

Although it may not be quite pertinent, another kind of judicial dishonesty is where a judge desires to acquire cheap popularity as a merciful officer or to acquire *punnyam* by twisting of cases of murder into cases of culpable homicide not amounting to murder or even into cases of grievous hurt. This process is accomplished by twisting the evidence and inventing grave and sudden provocation where commonsense forbids such a process. So long as a capital punishment remains on the Statute Book, so long will this Government naturally regard such conduct on the part of judicial officers as essential unjudicial.

Almost equivalent to these tactics are those of judges in relation to confessions of co-accused. I hope this House will realise that while such a confession should not be regarded as final or conclusive, nevertheless, it would not be expedient to rule it out altogether.

The amendment was put and lost.

The question that clause 30 do stand part of the Bill was then put and carried.

Clause 30 was added to the Bill.

Clauses 31 to 166.

The question that clauses 31 to 166 do stand part of the Bill was put and carried.

Clauses 31 to 166 were added to the Bill.

Clause 3.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I have an amendment to Clause 3 dealing with Definitions. At the end of Clause 3, the following definition shall be added :

> "Police Officer" means a police officer as defined in the Police Act and includes any person who exercises the powers of a police officer under any law for the time being in force.

MR. E. G. SALTER: I second the amendment.

The amendment was put and carried.

The question that Clause 3, as amended, do stand part of the Bill was put and carried.

Clause 3, as amended was added to the Bill.

Title and Preamble.

The question that the Title and Preamble do stand part of the Bill was then put and carried.

The title and the preamble were added to the Bill.

MR. PUTHUPALLI S. KRISHNA PILLAI: Before I move for the third reading of the Bill, I may be permitted to move the following amendment to Clause 1 : After the words "Travancore Evidence Act" the figures "1117" shall be added.

MR. E. G. SALTER: I second the motion.

The amendment was put and carried.

MR. PUTHUPALLI S. KRISHNA PILLAI: For the word "on" occurring at the end of Clause the words "at once" shall be substituted.

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MR. E. G. SALTER : I second the motion.

The amendment was put and carried.

MR. PUTHUPALLI S. KRISHNA PILLAI : In Clause 2 for the words "that day" the words "the date of commencement of this Act" shall be substituted.

MR. E. G. SALTER : I second the motion.

The motion was put and carried.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, I move that the Travancore Evidence Bill as amended be passed.

MR. E. G. SALTER : I second it.

The motion was put and carried.

The Bill, as amended, was passed.

THE TRAVANCORE PENAL CODE (AMENDMENT) BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, I rise to present the report of the Select Committee appointed to consider the Travancore Penal Code Amendment Bill and beg to move that the Bill as revised be taken into consideration.

MR. E. G. SALTER ; I second it.

The motion was carried.

Clauses 1 to 18,
Title and Preamble.

The question that Clauses 1 to 18 and the title and the preamble do stand part of the bill was put and carried.

Clauses 1 to 18, the title and the preamble were added to the Bill.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, before moving for the third reading of the Bill, I beg to move that in clause 1 sub-clause (1) the figure "7" shall be substituted for the figure "6".

MR. E. G. SALTER : I second it.

The amendment was carried.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, I beg to move that the Travancore Penal Code (Amendment) Bill as amended be passed.

MR. E. G. SALTER : I second it.

The motion was put and carried.

The Bill, as amended, was passed.

THE TRAVANCORE CRIMINAL PROCEDURE CODE BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, I rise to present the report of the Select Committee appointed to consider the Travancore Criminal Procedure Code Bill and beg to move that the Bill as revised to the Select Committee be taken into consideration.

MR. E. G. SALTER : I second it.

The motion was put and carried.

Clauses 1 to 105.

The question that clauses 1 to 105 do stand part of the Bill was put and carried.

Clauses 1 to 105 were added to the Bill.

Clause 106.

MR. C. JEBAMONY NADAR : Sir, I move that in lines 2 and 3, the words "specially empowered by Our Government in this behalf." be omitted. This clause corresponds to Section 93 of the present Code. The present Code was passed in 1068. Till this time no occasion arose to amend the present Code so as to limit the powers of a Magistrate of the

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